

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD VS.
MERCHANT MARINER'S DOCUMENT NO Z 1206-120
Issued To: Ira S. SNELL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2103

Ira S. SNELL

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 5.30-1.

By order dated 27 October 1976, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found alleges that Appellant, being the holder of the captioned document, was convicted on 8 May 1972 of a violation of the Uniform Narcotic Drug Act of the State of Washington in King County Superior Court, a court of record, for possession and sale of a narcotic drug, to wit, heroin.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and the specification.

The Investigating Officer introduced in evidence various documentary evidence.

In defense, Appellant offered in evidence his own testimony in mitigation. At the end of the hearing, the Judge rendered an oral in which he concluded that the charge and specification had been proved by plea. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision and order was served on 27 October 1976. Appeal was timely filed on 29 November 1976.

FINDINGS OF FACT

Appellant was issued a Merchant Mariner's Document on 9 May 1966. On 8 May 1972, he was convicted of a violation of the Uniform Narcotic Drug Act of the State of Washington in King County Superior Court, a court of record, for possession and sale of heroin. On 27 Oct 1976, an Administrative Law Judge acting under the authority of 46 USC 239b revoked the above-named document based on Appellant's plea of guilty and the documentary evidence

introduced by the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that "the revocation of Appellant's Merchant Mariner's Document ought to be retroactive to June, 1973, at which time Appellant attempted to voluntarily surrender his document to United States Coast Guard officials but was refused."

APPEARANCE Albert Peter GERMANO, Esq Puget Sound Legal
Assistance Foundation

OPINION

Appellant seeks relief in requesting modification of an order of the Administrative Law Judge in this case to provide for it being made retroactive to June 1973.

Essentially this is a request for administrative clemency which is processed in another procedure under 46 CFR 5.13. There are essentially no identifiable grounds for appeal nor have any exceptions been advanced to the initial decision of the Judge.

The revocation cannot be made retroactive as prayed for by Appellant. Commandant Appeal Decisions 1161 (Doroba), and 845 (Vincente). In Doroba (1161), the Commandant stated

46 U.S. Code 239 (g) requires a written order to suspend or revoke a document and limits the taking of an appeal to within thirty days from the time of the order. Consequently, the order cannot be made retroactive to a time prior to when the written decision is actually received by the person charged. See Commandant Appeal Decision Nos. 845 and 1014.

In Commandant Appeal Decision 845 (vincente), the Commandant denied a prayer for relief that the effective date of the order should be changed to the date of the offense. The Commandant cited 46 CFR 137.09-80 for the proposition that the order cannot be made retroactive. This is, in part, to insure the establishment of a time certain from which the Appellant's activities in society can be documented to permit an evaluation as to the propriety of accepting an application for a new merchant mariner's document.

CONCLUSION

Appellant's document was subject to Coast Guard jurisdiction, was properly revoked by the Administrative Law Judge upon valid findings and cannot be revoked retroactively.

ORDER

The order of the Administrative Law Judge dated at Seattle, Washington, on 27 October 1976, is AFFIRMED.

O.W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 20th day of May 1977.

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Narcotic Drug Law Violation
Revocation

Not Retroactive